

83-1-F

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January 18, 1983

His Excellency, John H. Sununu
and The Honorable Executive Council
State House
Concord, New Hampshire 03301

Re: Petition of Harry Piper Seeking Representation and
Indemnification under RSA 99-D:2 (Supp.)

Your Excellency and Members of the Council:

You have been presented with a Petition by Harry Piper, a duly appointed justice of the peace, seeking representation by the Attorney General and indemnification by the State in a civil action filed against him in connection with his issuance of an arrest warrant. The Petition is before you as an appeal under RSA 99-D:7 of a determination by this office on December 3, 1982 that representation should be denied on the basis that justices of the peace do not fall within the scope of coverage of RSA 99-D:2.

RSA Chapter 99-D was enacted in 1978 expressly "to protect state officers, trustees, officials and employees who are subject to claims ... arising from acts committed within the scope of their official duty while in the course of their employment for the state." RSA 99-D:1. RSA 99-D:2 therefore authorizes the State to provide representation in civil actions by the Attorney General and indemnification for resulting judgments to:

a present or former officer, trustee,
official or employee of the state or any
agency thereof, including ... any justice of
the district, municipal, probate, superior
or supreme court, or the clerks thereof....



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Your Petitioner argues from the premise that, because a justice of the peace has certain quasi-judicial duties, he falls within the statutory coverage for certain judges. Such a construction is directly contrary to the specific words of the statute, and we believe that the legislature would have named justices of the peace if it had intended to cover them.

RSA 99-D:2 also provides coverage for "state officials and employees," and we have considered and rejected the proposition that a justice of the peace is a "state official or employee." Although a justice of the peace receives a state commission and performs certain public duties prescribed by state statutes, RSA 99-D:2 certainly does not provide coverage for any action by any public officer at all levels of government. Because the purpose of RSA Ch. 99-D is to authorize the assumption of liability by the State for judgments arising out of the lawful actions of "state officers ... and employees," (emphasis added) I have concluded that the persons for whom defense and indemnification was contemplated are limited to officers and employees of the state as those terms are used in other statutes relating to state employment. See for example RSA Ch. 98 relative to state classified employment or specific statutes providing for the appointment of state department heads.

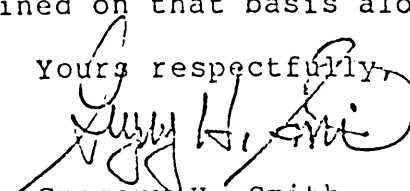
If the term "state official" was meant to include any official appointed by the Governor and Council, the language designating certain other members of the judiciary would have been wholly unnecessary. Furthermore, there is no clear indication in the statute or its legislative history that the legislature intended to provide representation and indemnification for approximately 7,500 justices of the peace or numerous other officials who serve at the municipal or county level of government, but who are appointed by the Governor and Council. If the legislature believes the State should be financially responsible for the payment of judgments against these officials, it can so provide by amending RSA 99-D.

For all the foregoing reasons, I would decline to represent the petitioner in this case. Before representation were undertaken, it would be necessary to determine whether the acts giving rise to the suit were within the scope of authority and not wanton and reckless. Because we have declined on purely legal grounds, we have not reviewed this case for a determination on that ground. Finally, although it is a

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technical matter, it does not appear that notice of this litigation was properly provided to this office under RSA 99-D:2, and under that provision, consideration of this request for indemnification could be declined on that basis alone.

Yours respectfully,



Gregory H. Smith
Attorney General

GHS/der